REMARKS

Claims 1, 2, 6-7, 9, 12-16, 18 and 19 are pending in the present application.

Claims 1, 6, 7 and 9 are amended.

Claims 5 and 11 are canceled.

Claims 34-39 are newly entered.

Reconsideration on the merits is respectfully requested.

No new matter is entered by the amendments.

The claims are believed to be allowable for the reasons set forth herein. Notice thereof is respectfully requested.

Interview

Applicants sincerely appreciate the opportunity to discuss this application with the Examiner. It is anticipated that this progressed the application towards allowance.

In particular, Applicants appreciate the suggestion by the Examiner to incorporate the method claims 34-39.

Claim Rejections - 35 USC § 103

Claims 1, 2, 6-7, 9, 12-16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp et al. (U.S.P 6,263,317).

Sharp et al. is cited as disclosing the invention. In making this argument the Office has listed each element of claim 1 and a proposed corresponding section in Sharp et al. Applicant respectfully disagrees with the comparison for the reasons set forth herein.

The Office has opined that Sharp et al. teaches:

> "transmit a manufacturers confirmation report from the manufacturer **130** to the exchange **110**; the manufacturers confirmation report comprises an availability index (the quantity available) and a customer price (the cost of the product); the availability index is derived from the availability report (the dealer price adjustment -the commission, the shipping cost, or both)and the customer price is derived from the dealer price adjustment (the cost of the product, and the commission, the shipping cost, or both)"

The Office fails to mention any discussion of a customer price as defined in the specification to be based on a relationship between the customer and the manufacturer which the dealer may, or may not, have visibility of. There is no adjustment due to the manufacturers price to the customer as set

forth in claim 1. This critical feature is lacking in Sharp et al. and in the art.

Sharp et al. is specific to a linear pricing model. Regardless of the customer the price is essentially a summation of the manufacturers cost, the dealer markup, shipping cost and taxes.

In response to the previous arguments the Office has opined:

> "Applicant has argued that there is no adjustment for specific intra-channel relations between the customer and the dealer, the customer and the manufacturer, or the dealer and the manufacturer."

Applicant submits that Sharp et al. fails to teach a relationship between the manufacturer and the customer particularly when this relationship may be separate, and not visible, with regard to the dealer. In fact, the inventive model allows multiple two-party relationships without the third party necessarily having visibility of the contractural relationship.

The Office has opined:

> "Applicant has argued that Sharp et al. fails to teach the price to the customer dependant on the dealer or the manufacturer. In economics, a price of a product is dependent on the dealer.

> The dealer usually sets the price to the product according to the manufacturer's suggested sale price or the dealer adjusts the price according to supply-and-demand."

Applicants agree with the Office in this instance and this is exactly where the present application deviates from Sharp et al. Typically, the dealer does set the price exclusively. This price is based on a purchase relationship between the manufacturer and the dealer, the dealer markup, taxes and shipping. This is a linear model which is different from the present invention. The present invention is a trigonal model wherein an additional relationship exist between the manufacturer and the customer. It is this relationship which is captured in the customer price of the present invention which includes a customer/manufacturer specific price which is different from the price available to the dealer. Nowhere in Sharp et al. is this concept contemplated. The Office has used the definition of "customer price" in accordance with Sharp et al. instead of the definition used in the present specification. The customer price is specifically defined in paragraph [00033] to include a dealer price adjustment (DPA) and the contracted price between the customer and manufacturer. The term "customer price" in accordance with the definition in Sharp et al. is

strictly a price set by the dealer. The term "customer price" in accordance with the present invention includes a dealer price and an additional adjustment specifically between the individual customer and the manufacturer.

The Office has improperly defined the term "customer price" in accordance with the prior art and then rendered a rejection based on that incorrect definition. This is improper.

The Office further opines that:

> "the Office has noted that the features upon which applicant relies (i.e., obtaining a different price from a specific manufacturer or dealer) are not recited in the rejected claims(s)."

Applicants respectfully disagree. In the present application "customer price" is a defined term as set forth previously. By definition, the price from a specific manufacturer is included within the definition of the customer price. Only when a different definition of customer price is used can the position taken by the Office be considered proper.

The Office has further opined that:

> "Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims."

Applicants have no quarrel with this statement except to the extent that it does not apply in this instance. Applicants are not asking the Office to read a limitation into the specification as stated. Applicants are merely asking that a defined term be used in accordance with the definition set forth in the specification. Specifically, Applicants request that the term "customer price" be used in accordance with the definition in the specification not the definition derived from other sources.

The Office has further opined that:

> "Applicant has argued that the present invention discloses that after an order is placed, the manufacturer and the dealer are determined prior to determining the customer price. Applicant should reconsider this argument as line 6 of claim 1 only indicates that the manufacturer is determined."

The Office has taken a single line from the claim and argued that the position by the Applicant is in error. Applicant respectfully submits that line 6 of claim 1 is to be read in context with every line of claim 1. At line 6 the manufacturer is determined. Other steps of the multi-step process are listed in the remaining lines. The customer price is stated later and, by definition, this includes a manufacturer adjustment specific

to the relationship between the manufacturer and the customer which is not taught in Sharp et al. The mere fact that the single step of selecting the manufacturer is done at line 6 does not indicate that the claim ends there.

The Office opines that:

> "Applicant has argued that the method of determining the manufacturer is through the dealer price adjustment being carried through the various communication links culminating in a customer price,which may be different from manufacturer, dealer or customer. Applicant is reminded that the step of determining the manufacturer does not indicate how this step is accomplished. Line 6 merely states that the manufacturer is determined from the product identifier."

Applicants refute this assertion. The manufacturer is determined by the product identifier. The product identifier defines the manufacturer as set forth in, at least, paragraph [00038]. It would be apparent that a product identifier which includes the manufacturer would, by definition, determine the manufacturer.

The Office continues stating:

> "Furthermore, the dealer price adjustment is not carried to the exchange and the customer according to lines 24-27 of claim 1. Lines 24-27 indicate the customer receives the product order confirmation, which the product order

confirmation is 'the manufacturers confirmation report."

Applicants respectfully submit that this argument has no basis. The argument is predicated on the misinterpreted statement above that the manufacturer is somehow determined through the dealer price adjustment. The premise from which this argument begins is in error and the statement from the Office has no relevance in the current case. If Applicant is misinterpreting the statement clarification is requested.

The Office has referred to col. 5 lines 39-43 for elaboration of the quantity available and col. 5 lines 10-13 for elaboration regarding the cost. These recitals are in response to the position by Applicant that the Office failed to elaborate on where Sharp et al. teaches a manufacturing report comprising an availability index and a customer price.

Col. 5, lines 39-43 of Sharp et al. describes a process of contacting multiple vendors to locate product. Col. 5 lines 10-13 merely describe that payment is made by a credit card. Neither of these statements have any bearing on the customer price as defined in the specification. Applicant continues to assert that Sharp et al. fails to teach, at least, the customer

price as set forth in the instant claims and defined in the specification.

The Office argues that:

> "Applicant has argued that the Office errs equating a predetermined price with a dealer adjusted price to the customer. In making this argument, applicant is making the assumption that the dealer adjusted price is sent to the customer. However, lines 24-25 of claim 1 indicate that the product order confirmation has been sent to the customer and not the dealer price adjustment."

Applicants submit that this argument was entered in response to the previous position that the predetermined price and dealer adjusted price were the same. Applicants submit that the customer price is sent to the customer. There may be no need to send the dealer price adjustment to the customer since this may be subject to a separate relationship between the dealer and manufacturer which the customer is not privy to. The only price the customer needs is the customer price. While this has, as a component, a dealer price adjustment, which the manufacturer may have to reimburse, the price that the customer is interested in is simply that which the customer has to pay which may be dictated by a separate agreement strictly between the manufacturer and customer.

The position taken by the Office that the initial cost does not include shipping cost, tax or both and that the adjusted price would include these is of no consequence. The customer price may be set separately between the manufacturer and customer.

As a conclusion the Office admits that the dealer price adjustment has not been properly construed. This confusion stems, in part, from the failure to recognize the proper definition of the customer price. By attempting to define the dealer price adjustment using the definitions of Sharp et al. the entire purpose, and benefit of the invention has been missed. Applicants respectfully submit that, if the proper definition of customer price is used the concept of dealer price adjustment is instantly clarified.

Claims 1 and 13 are both rejected due to a failure of the Office to fairly interpret, at least, the customer price in accordance with the definition of the term in the specification. Applicant respectfully submits that when the terms are used in accordance with their definition claims 1 and 13 are patentable over Sharp et al.

Claims 2, 6, 7, 9 and 12 depend from claim 1 and are patentable for, at least, the same reasons as claim 1. Claims 14-16 and 18-19 depend from claim 13 and are patentable for, at least, the same reasons as claim 13.

Applicants respectfully request that the rejection of claims 1, 2, 6, 7, 9, 12-16, 18 and 19 under 35 U.S.C. 103(a) as being unpatentable over Sharp et al. be withdrawn.

Alternatively, Applicants request that the arguments be entered into the record to place the application in better condition for appeal.

CONCLUSIONS

Claims 1, 2, 6, 7, 9, 12-16, 18, 19 and 33-39 are pending in the present application. All claims are believed to be in condition for allowance. Notice thereof is respectfully requested.

Respectfully submitted,

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